

# Indiana's Victim Compensation Act: A Comparative Perspective

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## I. INTRODUCTION

The problem of crime in American society touches the life of almost every citizen. Statistics reveal its dimensions. One violent crime (murder, forcible rape, robbery, or aggravated assault) occurs every twenty-seven seconds in the United States.<sup>1</sup> In 1979, there were 1,178,539 violent crimes reported to law enforcement agencies.<sup>2</sup> In the same year, 18,254 violent crimes were reported to Indiana law enforcement agencies.<sup>3</sup> The Law Enforcement Assistance Administration's National Crime Survey estimated that during 1978 the instances of personal victimizations from the crimes of rape, robbery, and assault totaled 5,941,000.<sup>4</sup>

Only in the last two decades have American criminal justice policymakers begun to confront the ravaging health, psychological, and financial consequences to victims of violent crime. Victim compensation, defined as the "granting of public funds to persons who have been victimized by a crime of violence and persons who survive those killed by such crimes . . .,"<sup>5</sup> is a systemic response to the financial consequences of crime to its victims.

This Article presents a comparative analysis of the Indiana, New York, and Minnesota victim compensation legislation, and makes recommendations for Indiana based on the experiences of the New York and Minnesota victim compensation programs. The Indiana Act is compared to the New York and Minnesota Acts because the New York Act has served as an early statutory model for many

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<sup>1</sup>U.S. FED. BUREAU OF INVESTIGATION, DEPT OF JUST., UNIFORM CRIME REPORTS 5 (1979).

<sup>2</sup>*Id.* at 40.

<sup>3</sup>*Id.* at 50.

<sup>4</sup>U.S. LAW ENFORCEMENT ASSISTANCE AD., DEPT OF JUST., CRIME VICTIMIZATION IN THE UNITED STATES: SUMMARY FINDINGS OF 1977-78; CHANGES IN CRIME AND TRENDS SINCE 1973, Table 1 (1979).

<sup>5</sup>H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 3 (1974).

jurisdictions,<sup>6</sup> and the Minnesota Act represents one of the most comprehensive pieces of legislation concerning victim compensation.<sup>7</sup>

It should also be noted that the Indiana Act provides that during 1981 a committee of the General Assembly is to review the need for the victim compensation program and submit a recommendation to the General Assembly before December 31, 1981.<sup>8</sup> Unless further action is taken by the General Assembly, the Violent Crime Compensation Division will be abolished as of December 31, 1982.<sup>9</sup> This provision exhibits a legitimate concern for fiscal prudence and administrative efficiency; nevertheless, it intimates that Indiana has yet to demonstrate a long-term commitment to state-operated victim compensation. This Article posits that victim compensation deserves a greater priority in the state public sector than is indicated in the Indiana Act.

## II. THE HISTORY AND JUSTIFICATION OF VICTIM COMPENSATION

A brief history of victim compensation demonstrates the paucity of governmental concern for victims of crime. The earliest legal reference to victim compensation is found in the Code of Hammurabi enacted over four thousand years ago.<sup>10</sup> Other references are found in the Old Testament<sup>11</sup> and the *Iliad*.<sup>12</sup> Compensation of victims of crime was the exception, however; most ancient legal codes recognized the principle of restitution by the offender to the victim rather than compensation by state indemnification of crime victims.<sup>13</sup>

The modern revival of victim compensation is generally credited to the British social activist Margaret Fry who in the 1950's advocated legislation throughout the United Kingdom to compensate the victims of crime.<sup>14</sup> These ideas came to fruition in victim compensation legislation in New Zealand in 1963,<sup>15</sup> Great Britain in 1964,<sup>16</sup> and

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<sup>6</sup>See generally Edelhertz, Geis, Chappell, & Sutton, *Public Compensation of Victims of Crime: A Survey of the New York Experience* (pts. 1-2), 9 CRIM. L. BULL. 5, 101 (1973) [hereinafter cited as Edelhertz].

<sup>7</sup>See generally Note, *The Minnesota Crime Victims Reparation Act: A Preliminary Analysis*, 2 WM. MITCHELL L. REV. 187 (1976) [hereinafter cited as Note].

<sup>8</sup>IND. CODE § 16-7-3.6-19 (Supp. 1980).

<sup>9</sup>*Id.*

<sup>10</sup>CODE OF HAMMURABI §§ 21-22 (C. Edwards trans. 1904).

<sup>11</sup>*Exodus* 21:18-19.

<sup>12</sup>HOMER, *ILIAD*, Bk. IX, at 429 (A. Murray trans. 1924).

<sup>13</sup>R. MEINERS, *VICTIM COMPENSATION* 7 (1978) [hereinafter cited as MEINERS].

<sup>14</sup>*Id.* at 9.

<sup>15</sup>Criminal Injuries Compensation Act, Pub. Act No. 134, 1963-1 Stat. N.Z. 861.

<sup>16</sup>HOME OFFICE, *COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE*, CMD. NO. 2323 (1964) as modified by the House of Commons, 697 H.C. WRITTEN ANSWERS (5th ser.) 89 (1964). See generally 78 HARV. L. REV. 1683 (1965).

many Australian states<sup>17</sup> and Canadian provinces in 1967.<sup>18</sup>

California in 1965 became the first American state to adopt victim compensation legislation.<sup>19</sup> New York was the second state to adopt victim compensation legislation with the program becoming effective in 1967.<sup>20</sup> Presently, thirty states and the Virgin Islands have some form of victim compensation.<sup>21</sup> In general, victim compensation in these states applies only to the personal injuries of victims of violent crime. No American jurisdiction compensates a victim for general property losses as a result of such crime.<sup>22</sup>

Various justifications for victim compensation have been offered by commentators during this period of growth of state programs. The two most commonly offered justifications suggest that the state has a duty or obligation to operate victim compensation programs. The first holds that the state has assumed responsibility for the protection of society by exercising its authority to apprehend and prosecute criminal offenders and that it must compensate victims of crime when it breaches this obligation.<sup>23</sup> The second rationale is based upon community welfare. It holds that the state has a moral duty to assist victims of crime just as it financially assists some qualified citizens through social security, unemployment, and workmen's compensation programs.<sup>24</sup>

Several other justifications for state-operated victim compensation programs have been advanced. The shared risk rationale, based on an insurance analogy, suggests that taxes paid by the citizenry serve as premiums for the victim compensation program and benefits provided to claimants act as indemnity for injuries due to criminal victimization.<sup>25</sup> The political-public interest rationale simply

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<sup>17</sup>See, e.g., Criminal Injuries Compensation Act, Pub. Act. No. 14, 1967 Stat. N.S.W.

<sup>18</sup>See, e.g., Criminal Injuries Compensation Act, ch. 84, 1967 Sask. Stat. 382.

<sup>19</sup>Act of July 15, 1965, ch. 1395, 1965 Cal. Stats. 3315 (repealed 1969) (current version at CAL. GOV'T CODE §§ 13957-13974 (West Supp. 1980)).

<sup>20</sup>Act of Aug. 1, 1966, ch. 894, 1966 N.Y. Laws 2596 (codified at N.Y. EXEC. LAW §§ 620-635 (McKinney 1972 & Supp. 1972-1980)).

<sup>21</sup>See generally Hoelzel, *A Survey of 27 Victim Compensation Programs*, 63 JUD. 485 (1980) for an overview of the organization and operation of compensation programs currently in effect.

<sup>22</sup>D. CARROW, *CRIME VICTIM COMPENSATION* 17-18 (Nat'l Inst. of Justice Program Models, 1980) (hereinafter cited as CARROW).

<sup>23</sup>See, e.g., Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. REV. 205, 224 (1964); Note, *Compensation for the Criminally Injured Revisited: An Emphasis on the Victim*, 47 NOTRE DAME LAW. 88, 93 (1971).

<sup>24</sup>See, e.g., MEINERS, *supra* note 13, at 5; Brooks, *The Case for Creating Compensation Programs to Aid Victims of Violent Crimes*, 11 TULSA L.J. 477, 483-85 (1976).

<sup>25</sup>See, e.g., Note, *Compensation for Victims of Violent Crimes*, 26 KAN. L. REV. 227, 228 (1978); Comment, *Compensation to Victims of Violent Crimes*, 61 NW. U.L. REV. 72, 84b (1966).

postulates that because many members of the public want compensation for victims of crime, legislatures are obliged to comply with this desire.<sup>26</sup> Under the anti-alienation rationale, it is asserted that victims of crime will feel alienated from the community unless public concern is exhibited toward victims by financial assistance.<sup>27</sup> The inadequacy-of-civil-action rationale holds that the vast majority of criminal offenders are not apprehended, and even if apprehended, do not have the financial means to pay for their damages resulting from victimization; hence, the state should intervene to compensate the victim.<sup>28</sup> Perhaps the most fundamental rationale for public compensation to the victim of violent crime is its essential morality. Victims have long suffered in two distinct senses: actual victimization and public indifference. Governmental largesse is the proper corrective.<sup>29</sup>

Of the three Acts discussed here, only the New York Act expresses a philosophical rationale. It is predicated on the grace of government rationale<sup>30</sup> which holds that out of a sense of mercy, the state should intervene to assist a victim of crime in need. In reality, nothing more substantial than a charitable concern for the plight of the victim underlies the sentiment.

### III. LEGISLATIVE HISTORIES OF THE INDIANA, NEW YORK, AND MINNESOTA VICTIM COMPENSATION ACTS

The Indiana Compensation for Victims of Violent Crimes Act<sup>31</sup> was passed by the Indiana General Assembly on February 27, 1978 over Governor Bowen's veto of the previous legislative session. The Act called for the immediate establishment of a victim compensation program,<sup>32</sup> but from its inception, the Indiana program has had a precarious existence.

The Violent Crime Compensation Division was originally a component of the Indiana Rehabilitation Services Board.<sup>33</sup> Its sole funding source was the Violent Crime Victims Compensation Fund derived

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<sup>26</sup>See, e.g., CARROW, *supra* note 22, at 6; Brooks, *supra* note 24, at 485-86.

<sup>27</sup>See, e.g., S. SCHAFER, *COMPENSATION AND RESTITUTION TO VICTIMS OF CRIME* 26 (2d ed. 1970).

<sup>28</sup>See, e.g., Lamborn, *The Propriety of Governmental Compensation of Victims of Crime*, 41 GEO. WASH. L. REV. 446, 450-53 (1973); Note, *supra* note 23, at 93.

<sup>29</sup>See, e.g., Note, *Compensating Victims of Crime: Evolving Concept or Dying Theory?*, 82 W. VA. L. REV. 89, 96 (1979).

<sup>30</sup>N.Y. EXEC. LAW § 620 (McKinney 1972).

<sup>31</sup>Act of Feb. 27, 1978, Pub. L. No. 358, 1977 Ind. Acts 22 (1978) (codified at IND. CODE §§ 16-7-3.6-1 to -20 (Supp. 1980)).

<sup>32</sup>Act of Feb. 27, 1978, Pub. L. No. 358, § 6, 1977 Ind. Acts 22, 35 (1978).

<sup>33</sup>*Id.* § 1, at 22-23 (current version at IND. CODE § 16-7-3.6-2 (Supp. 1980)).

from court costs in Class A misdemeanors and all felony convictions.<sup>34</sup> The first claim was filed on June 23, 1978.<sup>35</sup> Within a year, 154 claims were filed with the Division, and sixteen awards were rendered totaling \$59,244.21.<sup>36</sup> During this period, administrative expenditures were \$76,399.84.<sup>37</sup>

In 1979, fiscal considerations<sup>38</sup> prompted the General Assembly to appropriate only \$1.00 for administrative expenses for fiscal 1980.<sup>39</sup> Effective June 15, 1979, the Violent Crime Compensation Division ceased processing all claims.<sup>40</sup> At that time 101 claims were pending.<sup>41</sup> From mid-1979 until early 1980, the status of the victim compensation program was uncertain. During this period, the Indiana State Board of Health partially filled this void by receiving current claims.<sup>42</sup>

In the 1980 session, the General Assembly, with the Governor's approval, amended the Act by appropriating \$50,000 from the general fund for administrative expenses and by transferring administration of the program to the Indiana Industrial Board.<sup>43</sup> Thirty days after the amendment became law, the Violent Crime Compensation Division began operating within the Indiana Industrial Board under the direction of Robert McNevin.<sup>44</sup>

The stimulus for victim compensation legislation in New York was the brutal killing of a "good samaritan" who was assisting several elderly women under attack.<sup>45</sup> Enacted on August 1, 1966, the legislation established a Crime Victims Compensation Board to begin operating in March, 1967.<sup>46</sup> The New York legislation was a "landmark effort" in the judgment of many commentators.<sup>47</sup> In time,

<sup>34</sup>Act of Feb. 27, 1978, Pub. L. No. 358, § 1, 1977 Ind. Acts 22, 29-30 (1978) (current version at IND. CODE § 16-7-3.6-17 (Supp. 1980)).

<sup>35</sup>[Feb., 1978-June, 1979] IND. VIOLENT CRIME COMPENSATION DIV. ANN. REP. 4 [hereinafter cited as ANNUAL REPORT].

<sup>36</sup>*Id.* at 5.

<sup>37</sup>*Id.* at 8.

<sup>38</sup>Interview with Judith Palmer, Executive Assistant to the Governor, and Robert McNevin, Director of the Violent Crime Compensation Division of the Indiana Industrial Board, in Indianapolis (April 17, 1980) [hereinafter cited as Interview].

<sup>39</sup>Act of April 10, 1979, Pub. L. No. 306, § 2, 1979 Ind. Acts 1514, 1577 (1979).

<sup>40</sup>Interview, *supra* note 38.

<sup>41</sup>ANNUAL REPORT, *supra* note 35, at 14.

<sup>42</sup>Interview, *supra* note 38.

<sup>43</sup>Act of Feb. 28, 1980, Pub. L. No. 117, §§ 3, 7, 1980 Ind. Acts 1311, 1313 (1980) (codified at IND. CODE §§ 16-7-3.6-2 to -20 (Supp. 1980)).

<sup>44</sup>Interview, *supra* note 38.

<sup>45</sup>Edelhertz (pt. 1), *supra* note 6, at 8.

<sup>46</sup>Act of Aug. 1, 1966, ch. 894, 1966 N.Y. Laws 2596 (codified at N.Y. EXEC. LAW §§ 620-635 (McKinney 1972 & Supp. 1972-1980)).

<sup>47</sup>Edelhertz (pt. 1), *supra* note 6, at 27.

it "would provide guidelines for other state programs, and the experience in New York State would provide empirical data for adjudicating ideological questions related to victim compensation."<sup>48</sup>

Minnesota initially had a "good samaritan" law which provided limited compensation to innocent persons attempting to aid the victim of a crime, or attempting to apprehend or arrest a suspected criminal.<sup>49</sup> After numerous efforts following the expiration of this law in 1971, broader victim compensation legislation establishing a Crime Victims Reparation Board was enacted on April 11, 1974.<sup>50</sup>

#### IV. VICTIM COMPENSATION PROGRAMS IN ACTION

##### A. Terminology

The Indiana Act applies only to "violent crimes" defined as a "Class A misdemeanor or any felony [resulting] in bodily injury or death."<sup>51</sup> The definition of "crime" in the New York<sup>52</sup> and Minnesota<sup>53</sup> Acts is virtually the same. Each Act defines "victim" in the same manner, that is, as one who suffers bodily injury or death as a result of a crime.<sup>54</sup> The Indiana Act defines "claimant" as a victim filing an application for assistance under the Act including the parent, surviving spouse, legal dependent, or personal representative of the vic-

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<sup>48</sup>*Id.*

<sup>49</sup>Act of June 6, 1969, ch. 1018, 1969 Minn. Laws 2044 (expired July 1, 1971).

<sup>50</sup>Act of April 11, 1974, ch. 463, 1974 Minn. Laws 1132 (codified at MINN. STAT. ANN. §§ 299B.01-16 (West Supp. 1980)).

<sup>51</sup>IND. CODE § 16-7-3.6-1(b) (Supp. 1980). Crimes involving the operation of a motor vehicle are not considered "violent crimes" unless the offense was intentional. *Id.* § 16-7-3.6-1(b)(1)-(4).

<sup>52</sup>N.Y. EXEC. LAW § 621(3) (McKinney 1972).

<sup>53</sup>MINN. STAT. ANN. § 299B.02(5)(a) (West Supp. 1980).

<sup>54</sup>IND. CODE § 16-7-3.6-1(e) (Supp. 1980); MINN. STAT. ANN. § 299B.02(9) (West Supp. 1980); N.Y. EXEC. LAW § 621(5) (McKinney 1972). The Indiana Act uses the term "individual" rather than "person" as is used in the New York and Minnesota Acts. The Indiana Act also speaks of injuries or death as "a result of a violent crime," whereas both the New York and Minnesota Acts speak of a "direct result of a crime." This language in the Indiana Act indicates a broader causation element than in the New York and Minnesota Acts. Also, it is not clear why IND. CODE § 16-7-3.6-1(d) (Supp. 1980) defines "person" as being a sole proprietorship, partnership, corporation, association, fiduciary, or individual. With the exception of the individual, the enumerated parties do not meet the eligibility criteria for benefits under the Indiana Act because these parties, as legal entities, cannot be victims of violent crime, would not have a surviving spouse or dependent child, and cannot be injured or killed under the eligibility criteria of the Indiana Act. There seems to be little meaning and utility in so defining a "person" under the Indiana Act. Neither the New York nor the Minnesota Act contains such a confusing definition.

tim.<sup>55</sup> The New York<sup>56</sup> and Minnesota<sup>57</sup> Acts define "claimant" as a person filing a claim for assistance under the Act. Parties are specified elsewhere.<sup>58</sup>

### B. Administration

The original 1977 legislation placed the Indiana victim compensation scheme within the Indiana Rehabilitation Services Board as the Violent Crime Compensation Division.<sup>59</sup> The 1980 Indiana General Assembly enacted the legislation currently in force which transferred the Violent Crime Compensation Division from the Indiana Rehabilitation Services Board to the Indiana Industrial Board.<sup>60</sup> The Indiana Industrial Board presently consists of seven members appointed by the governor with one being designated chairman.<sup>61</sup>

New administrative agencies were also created in New York and Minnesota to implement their victim compensation legislation. Under the New York Act, the New York Crime Victims Compensation Board was established within the state Executive Department.<sup>62</sup> The Minnesota Crime Victims Reparations Board was established in Minnesota to administer the victim compensation program as a component of the Department of Public Safety.<sup>63</sup>

Although the Indiana Violent Crime Compensation Division has powers and duties generally similar to that of the New York and Minnesota administrative bodies,<sup>64</sup> the latter two have significant powers not found in the Indiana Act. The powers and duties of the

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<sup>55</sup>IND. CODE § 16-7-3.6-1(c) (Supp. 1980).

<sup>56</sup>N.Y. EXEC. LAW § 621(2) (McKinney 1972).

<sup>57</sup>MINN. STAT. ANN. § 299B.02(3) (West Supp. 1980).

<sup>58</sup>See MINN. STAT. ANN. § 299B.03(1) (West Supp. 1980); N.Y. EXEC. LAW § 624(1), (McKinney 1972).

<sup>59</sup>Act of Feb. 27, 1978, Pub. L. No. 358, § 1, 1977 Ind. Acts 22-23 (1978).

<sup>60</sup>Act of Feb. 28, 1980, Pub. L. No. 117, § 3, 1980 Ind. Acts 1311 (1980) (codified at IND. CODE § 16-7-3.6-2 (Supp. 1980)).

<sup>61</sup>IND. CODE § 22-3-1-1 (1976). The chairman must be an attorney. *Id.* The full-time board has administrative jurisdiction over the Indiana Workmen's Compensation Act in addition to the Violent Crime Compensation Division as provided by the 1980 legislation. *Id.* § 22-3-1-2 (1976).

<sup>62</sup>N.Y. EXEC. LAW § 622(1) (McKinney Supp. 1972-1980). The board has five members who are appointed by the Governor. *Id.* One member is designated chairman by the Governor, and all members have full-time board duties. *Id.* § 622(3)-(4) (McKinney 1972).

<sup>63</sup>MINN. STAT. ANN. § 299B.05(1) (West Supp. 1980). The board has three members who are appointed by the Governor. *Id.* One member is designated chairman by the Governor, and all members have only part-time board duties. *Id.* § 299B.05(1), (3).

<sup>64</sup>IND. CODE § 16-7-3.6-4 (Supp. 1980); MINN. STAT. ANN. § 299B.06 (West Supp. 1980); N.Y. EXEC. LAW § 623 (McKinney 1972 & Supp. 1972-1980).

New York Board were initially no greater than those presently found in the Indiana Act.<sup>65</sup> In 1977<sup>66</sup> and 1979,<sup>67</sup> however, the original New York Act was amended to establish the Board as an aggressive advocate of victims' rights. The Board was given an advocacy role aimed at developing and promoting policies and programs which advance the rights and interests of crime victims.<sup>68</sup> The Board was also given the power to conduct conferences;<sup>69</sup> to serve as a clearinghouse for information regarding victim compensation;<sup>70</sup> to accept grant money to effectuate these goals;<sup>71</sup> and to provide counseling services to victims suffering from traumatic shock.<sup>72</sup> The needs of senior citizens were specifically addressed by adding the power to establish special investigative units to expedite the administration of claims by senior citizens and to encourage volunteer programs which visit the homes of older crime victims.<sup>73</sup> The Minnesota Board has similar powers to the Indiana Board, but also has the additional duty to publicize the availability of reparations and the claims method.<sup>74</sup>

The additional powers and duties of the New York and Minnesota administrative bodies should be given special consideration for inclusion in the Indiana Act. The New York legislation has created an administrative body with wide ranging powers to assist the victims of crime. This wholehearted effort to aid victims of crime is noteworthy in that a state government has understood that victims of crime suffer from more than financial disability. The New York program offers a comprehensive package of services well-suited to assist the victims of crime. Although these additional responsibilities would require a larger administrative staff, Indiana policymakers should consider their adoption in order to provide more comprehensive services to victims.

### C. *Eligibility for Reparations*

The eligibility criteria for victim compensation in each state are

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<sup>65</sup>Act of Aug. 1, 1966, ch. 894, § 1, 1966 N.Y. LAWS 2596, 2597-98 (codified at N.Y. EXEC. LAW § 623(1)-(8) (McKinney 1972)).

<sup>66</sup>Act of July 27, 1976, ch. 952, § 2, 1976 N.Y. LAWS 2010 (codified at N.Y. EXEC. LAW § 623(21) (McKinney Supp. 1972-1980)).

<sup>67</sup>Act of July 5, 1979, ch. 415, § 3, 1979 N.Y. LAWS 936, 937 (codified at N.Y. EXEC. LAW § 623(9)-(20) (McKinney Supp. 1972-1980)).

<sup>68</sup>N.Y. EXEC. LAW § 623(10)-(16) (McKinney Supp. 1972-1980).

<sup>69</sup>*Id.* § 623(17).

<sup>70</sup>*Id.* § 623(18).

<sup>71</sup>*Id.* § 623(19).

<sup>72</sup>*Id.* § 623(21).

<sup>73</sup>*Id.* § 623(9).

<sup>74</sup>MINN. STAT. ANN. § 299B.06(1)(d) (West Supp. 1980).

generally similar but there are certain differences. The Indiana Act includes seven categories of persons eligible for compensation: (1) a victim of a violent crime; (2) a surviving spouse or dependent child of a victim of a violent crime who died as a result of that crime; (3) any other legally dependent person of a victim of a violent crime who dies as a result of the crime; (4) the "good samaritan" who is injured or killed while trying to prevent a violent crime or to apprehend a violent offender; (5) a surviving spouse or dependent child of a "good samaritan" who dies as a result of a violent crime; (6) a person legally dependent for principal support upon a "good samaritan" who dies as a result of a violent crime; or (7) a person injured or killed while aiding "(i) a law enforcement officer in the performance of his lawful duties; or (ii) a member of a fire department who is being obstructed from performing his lawful duties."<sup>75</sup>

The New York Act sets out eligibility standards similar to the Indiana Act but with certain variations. For example, the New York Act specifically provides that a parent of a victim who died as a result of a violent crime is eligible for assistance.<sup>76</sup> The Indiana Act provides assistance to a parent only if he or she was a dependent of the victim.<sup>77</sup> The New York Act, however, does not specifically provide for categories (4)-(7) listed above.

The same parties eligible for assistance under the Indiana Act are eligible under the Minnesota Act with the following variations. The spouse or parent must be a "dependent" of the deceased victim, or included within the estate of a deceased victim, to be eligible for assistance.<sup>78</sup> Further, any person incurring economic loss by purchasing any product, services, or accommodations for a victim is eligible for assistance<sup>79</sup> when such items are deemed to be medical, psychological, or rehabilitative expenses.<sup>80</sup> The estate of a deceased victim, a guardian, guardian ad litem, conservator, or authorized agent of a victim or other persons are also eligible for assistance under the Minnesota Act.<sup>81</sup>

Each Act also specifies which persons are ineligible for compensation. Under the Indiana Act, the offender, an accomplice, or a member of the offender's family are ineligible.<sup>82</sup> If the victim is a legal nonspousal dependent of the offender, however, "compensation

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<sup>75</sup>IND. CODE § 16-7-3.6-5(a) (Supp. 1980).

<sup>76</sup>N.Y. EXEC. LAW § 624(1)(b) (McKinney 1972).

<sup>77</sup>IND. CODE § 16-7-3.6-5(a)(3) (Supp. 1980).

<sup>78</sup>MINN. STAT. ANN. § 299B.03(1)(b), (c) (West Supp. 1980).

<sup>79</sup>*Id.* § 299B.03(1)(d).

<sup>80</sup>*Id.* § 299B.02(7).

<sup>81</sup>*Id.* § 299B.03(1)(c), (e).

<sup>82</sup>IND. CODE § 16-7-3.6-5(b) (Supp. 1980).

may be awarded where justice requires."<sup>83</sup> The New York<sup>84</sup> and Minnesota<sup>85</sup> Acts also exclude the offender or an accomplice. The New York Act excludes a member of the offender's family, specifically defining a family member as "(a) any person related to . . . [the offender or an accomplice] within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with . . . [the offender or an accomplice], or (c) any person residing in the same household with . . . [the offender or an accomplice]."<sup>86</sup> The Minnesota Act excludes a victim who is a "spouse of or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice" except where the Board determines that the "interests of justice" otherwise require reparations.<sup>87</sup> Some interpretation problems may arise under the Indiana Act because the Act does not define "family" or personal relationships as in the New York and Minnesota Acts. Eligibility for the offender's legal nonspousal dependent, however, provides a sound basis for including the offender's dependent child within the financial protection of the Act when the dependent child is victimized by the violent acts of the offending parent. The New York definition of "family" is restrictive, whereas the Indiana and Minnesota provisions are more liberal by providing compensation to those with the greatest need as in the case of a dependent child criminally victimized by an offending parent.

The general family member exclusion in all three Acts, however, can be criticized because it denies benefits to those persons within the ambit of the victim compensation concept. The general family member exclusion is based upon a policy of preventing fraud and precluding benefits from accruing to the offender as a result of his criminal conduct. A leading commentator, W.F. McDonald, has criticized this policy:

The requirement that there be no personal relationship between the offender and the victim disqualifies large numbers of persons who are victims of violent crimes. Since at least 30 to 40% of all violent crimes involve members of the same family, it is difficult to understand the rationale for such a provision, if serving the needs of the victims is the actual objective of the program.<sup>88</sup>

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<sup>83</sup>*Id.*

<sup>84</sup>N.Y. EXEC. LAW § 624(2) (McKinney 1972).

<sup>85</sup>MINN. STAT. ANN. § 299B.03(2)(d) (West Supp. 1980).

<sup>86</sup>N.Y. EXEC. LAW § 621(4) (McKinney 1972).

<sup>87</sup>MINN. STAT. ANN. § 299B.03(2)(c) (West Supp. 1980).

<sup>88</sup>W. McDONALD, CRIMINAL JUSTICE AND THE VICTIM 273 (1976).

Indiana policymakers should consider a broader eligibility standard similar to the Minnesota standard which not only covers the legal nonspousal dependent but also any related party when the interests of justice require compensation. This broad standard is the fairest policy because justice may require that the spouse or relative of the criminal offender receive benefits in exceptional cases. Concern for the needs of a victim should outweigh any undue concern for the prevention of collusive fraud.

The Indiana Act also provides that an award may be denied to a victim who contributed to their own injury or death.<sup>89</sup> If, however, the victim's contribution resulted from conduct attributable to preventing a crime from occurring, or to apprehending a person who committed a crime in the victim's presence, an award may still be rendered.<sup>90</sup> Although the New York and Minnesota Acts have provisions concerning contributory misconduct of the victim, both statutes operate on a more liberal comparative negligence principle rather than the contributory negligence principle which underlies the Indiana statute. The New York statute provides that if the victim contributed to his injury, the award must be reduced or the claim rejected altogether.<sup>91</sup> The Minnesota statute likewise provides that reparations must be reduced to the extent that it is determined reasonable because of the victim's contributory misconduct.<sup>92</sup> Thus, if the misconduct is excusable for any reason, the award need only be reduced and not denied altogether. These provisions in the New York and Minnesota Acts allow for a more equitable result in determining the effect of contributory misconduct upon a compensation award. The Indiana Act should be based on a similar standard to avoid the potentially harsh results that may occur under the existing provision.

#### D. *Statutory Requisites*

The Indiana Act requires that the victim have been a resident of Indiana at the time the violent crime was committed and that the violent crime have been committed in Indiana.<sup>93</sup> The New York<sup>94</sup> and Minnesota<sup>95</sup> Acts do not have a residency requirement for the victim, although both Acts require that the crime have been committed within the state. Although the residency requirement contained in

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<sup>89</sup>IND. CODE § 16-7-3.6-11(c) (Supp. 1980).

<sup>90</sup>*Id.*

<sup>91</sup>N.Y. EXEC. LAW § 631(5) (McKinney 1972).

<sup>92</sup>MINN. STAT. ANN. § 299B.04(2) (West Supp. 1980).

<sup>93</sup>IND. CODE § 16-7-3.6-6(a) (Supp. 1980).

<sup>94</sup>N.Y. EXEC. LAW § 621(3) (McKinney 1972).

<sup>95</sup>MINN. STAT. ANN. § 299B.02(5)(a)(i) (West Supp. 1980).

the Indiana Act may be considered reasonable because it is the state that provides compensation, it can be argued that on the basis of reciprocity, the Act should provide for assistance to an out-of-state victim when the victim's state of residence has a similar victim compensation scheme.<sup>96</sup>

The Indiana Act requires that an application for compensation be filed within ninety days of the commission of the crime.<sup>97</sup> The Violent Crime Compensation Division, however, may grant an extension of time for good cause shown by the claimant.<sup>98</sup> No application under the Act may be filed after one year from the date on which the crime was committed.<sup>99</sup> The New York Act requires that the claim be filed not later than one year after the occurrence of the crime or the death of the victim.<sup>100</sup> The New York Board may extend the time for filing upon good cause shown by the claimant but the extension is limited to two years beyond the occurrence of the crime.<sup>101</sup> The Minnesota Act stipulates that the claim be filed within one year of the victim's injury or death but "if it could not have been made within that period, then the claim can be made within one year of the time when a claim could have been made."<sup>102</sup>

Although the Indiana provision is not objectionable, the Minnesota provision is preferable. Injuries caused by crime victimization may not be diagnosed until some time after the crime. If such conditions arise after the filing period, the victim has the burden of showing good cause for delay. It is more reasonable to allow the victim a liberal filing period because the discovery of injuries is not subject to such precise timing.

The Indiana Act further stipulates that no award shall be allowed unless the violent crime was reported to a law enforcement officer within forty-eight hours after the occurrence of the crime and the claimant fully cooperated with law enforcement personnel in solving the crime.<sup>103</sup> The Act states, however, that if the Violent

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<sup>96</sup>*But cf.* *Ostrager v. State Bd. of Control*, 99 Cal. App. 3d 1, 160 Cal. Rptr. 317 (1979), *appeal dismissed* 101 S. Ct. 53 (1980) (Stevens, J. would have noted probable jurisdiction and set the case for oral argument). In *Ostrager*, a New York resident shot in California challenged the residency requirement of the California Act. The California Court of Appeals rejected arguments against the residency requirement's validity based upon the Privileges and Immunities Clause and the Equal Protection Clause of the United States Constitution. 99 Cal. App. 3d at 5, 7-8, 160 Cal. Rptr. 319, 321.

<sup>97</sup>IND. CODE § 16-7-3.6-6(b) (Supp. 1980).

<sup>98</sup>*Id.*

<sup>99</sup>*Id.*

<sup>100</sup>N.Y. EXEC. LAW § 625(2) (McKinney Supp. 1972-1980).

<sup>101</sup>*Id.*

<sup>102</sup>MINN. STAT. ANN. § 299B.03(2)(e) (West Supp. 1980).

<sup>103</sup>IND. CODE § 16-7-3.6-7 (Supp. 1980).

Crime Compensation Division finds "compelling reasons for the failure to report to or to cooperate with law enforcement officials, and justice requires," the above requirement may be suspended.<sup>104</sup>

The New York Act only allows an award if police records indicate that the crime was reported to the proper authorities within one week after the occurrence of the crime unless the Board, upon good cause shown, finds that the delay was justified.<sup>105</sup> The Minnesota Act rejects an award when "the crime was not reported to the police within five days of its occurrence or, if [the crime] could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made."<sup>106</sup> It also provides that no award shall be allowed if the victim or the claimant failed or refused to cooperate fully with law enforcement personnel.<sup>107</sup> The Indiana two-day reporting requirement may be considered reasonable, but as in the case of the short filing period in Indiana, claimants may be forced into showing compelling reasons for failing to report within the two-day period. This is a burdensome provision when compared to the five-day requirement in Minnesota and the one-week requirement in New York. The Minnesota provision is the most reasonable of the three in allowing the time limitation to begin when the report could reasonably have been made.

### *E. Benefits*

1. *Coverage.*—The Indiana Act provides that compensation is to be awarded for "(1) expenses actually and reasonably incurred as a result of the bodily injury or death of the victim; (2) loss of income resulting directly from the bodily injury; (3) pecuniary loss to the legal dependents of the deceased victim; and (4) other actual expenses resulting from the bodily injury or death of the victim"<sup>108</sup> which are deemed reasonable. The New York Act uses substantially similar language in describing the extent of benefits provided under its victim compensation program. Compensation is provided for out-of-pocket loss, defined as "unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based."<sup>109</sup> The Indiana and New York Acts provide benefits for similar expenses and losses incurred by the victim. These expenses and losses can be summarized as medical expenses incurred

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<sup>104</sup>*Id.*

<sup>105</sup>N.Y. EXEC. LAW § 631(1)(c) (McKinney Supp. 1972-1980).

<sup>106</sup>MINN. STAT. ANN. § 299B.03(2)(a) (West Supp. 1980).

<sup>107</sup>*Id.* § 299B.03(2)(b).

<sup>108</sup>IND. CODE § 16-7-3.6-8(b)(1)-(4) (Supp. 1980).

<sup>109</sup>N.Y. EXEC. LAW § 626 (McKinney Supp. 1972-1980).

as a result of physical injury or death to the victim;<sup>110</sup> loss of income;<sup>111</sup> pecuniary losses, such as funeral and burial expenses, incurred by the legal dependents of a victim;<sup>112</sup> and other actual expenses resulting from the physical injury or death of a victim.<sup>113</sup>

The Minnesota Act, however, is more inclusive than the victim compensation act of any other state.<sup>114</sup> The Act generally provides that compensation is to be awarded for economic loss, that is, "actual detriment incurred as a direct result of injury or death."<sup>115</sup> The Minnesota Act specifically covers expenses incurred from medical and psychiatric services and products necessary for the victim's rehabilitation;<sup>116</sup> income which the victim would have earned in the absence of the injury;<sup>117</sup> and the cost of child care and household services necessary to substitute for those the victim would have performed but for the injury.<sup>118</sup> In the event of a victim's death, compensable expenses under the Minnesota Act include reasonable funeral expenses;<sup>119</sup> expenses for medical and psychiatric services and products incurred prior to death and for which the estate is liable;<sup>120</sup> loss of support;<sup>121</sup> and substitute child care and household services.<sup>122</sup>

The Minnesota Act not only uses more explicit statutory language in defining the kinds of benefits provided to victims, but covers more expenses and losses incurred by the victim. Under the Minnesota Act, there is little doubt as to which specific losses or expenses are covered. The Indiana and New York Acts will unfortunately require difficult administrative decisions to specify the particular losses and expenses covered under those Acts. As noted above, the Minnesota Act provides benefits for expenses incurred for rehabilitative services, psychological and psychiatric services, and substitute child care or household services.<sup>123</sup> Although they are

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<sup>110</sup>IND. CODE § 16-7-3.6-8(a) (Supp. 1980); N.Y. EXEC. LAW § 631(2) (McKinney Supp. 1972-1980).

<sup>111</sup>IND. CODE § 16-7-3.6-8(b)(2) (Supp. 1980); N.Y. EXEC. LAW § 631(2) (McKinney Supp. 1972-1980).

<sup>112</sup>IND. CODE § 16-7-3.6-8(b)(3) (Supp. 1980).

<sup>113</sup>*Id.* § 16-7-3.6-8(b)(4) (Supp. 1980); N.Y. EXEC. LAW § 631(2) (McKinney Supp. 1972-1980).

<sup>114</sup>Note, *supra* note 7, at 196.

<sup>115</sup>MINN. STAT. ANN. § 299.02(7) (West Supp. 1980).

<sup>116</sup>*Id.* § 299B.02(7)(a)(i)-(ii).

<sup>117</sup>*Id.* § 299B.02(7)(a)(iii).

<sup>118</sup>*Id.* § 299B.02(7)(a)(iv).

<sup>119</sup>*Id.* § 299B.02(7)(b)(i).

<sup>120</sup>*Id.* § 299B.02(7)(b)(ii).

<sup>121</sup>*Id.* § 299B.02(7)(b)(iii).

<sup>122</sup>*Id.* § 299B.02(7)(b)(iv).

<sup>123</sup>*Id.* § 299B.02(7).

not specifically mentioned in the Indiana Act, it can be argued that the broad language of the catch-all phrase in Indiana Code section 16-7-3.6-8(b)(4) regarding "other actual expenses resulting from the bodily injury or death of the victim" would cover these expenses.<sup>124</sup> It is urged that such coverage be provided to the victim because it would truly compensate the victim for actual expenses resulting from bodily injury. Further, the term "injury" in the Minnesota Act includes both bodily injury and mental or nervous shock; therefore, the traditional element of damages known to tort law as "pain and suffering" is also covered.<sup>125</sup> It is submitted that these psychological injuries are as real and at least as damaging to a victim of a violent crime as physical injuries. Indiana should adopt a policy of including "pain and suffering" as compensable items.

2. *Emergency Benefit Awards.*—Each of the three victim compensation programs provide for emergency awards to victims if two conditions are met—the victim will suffer a hardship without an emergency award and a final award will probably be made to the victim.<sup>126</sup> Each Act requires that the sum of the emergency award be deducted from the final award to the victim.<sup>127</sup> The Indiana Act provides for an emergency award not to exceed \$500.<sup>128</sup> The New York Act provides for one or more emergency awards not to individually exceed \$500 and the total amount of the emergency awards not to exceed \$1,500.<sup>129</sup> The Minnesota Act limits neither the number nor amount of the emergency awards.<sup>130</sup>

Indiana should consider adopting the unlimited Minnesota emergency award provision or the less restrictive New York provision. Immediate medical expenses may quickly consume an emergency award. Because the award is deductible from the final award or recoverable from the claimant where no final award is made, there is little reason to limit emergency awards either in number or

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<sup>124</sup>IND. CODE § 16-7-3.6-8(b)(4) (Supp. 1980).

<sup>125</sup>MINN. STAT. ANN. § 299B.02(8) (West Supp. 1980). As to the difficulty of determining psychological injuries, the Minnesota Note supplies a useful consideration: "Because this [mental and nervous shock] provision parallels the language permitting recovery for medical expenses for bodily injury, the same factors used by the [Minnesota] Board in considering what is 'reasonable' and 'necessary' for the treatment of bodily injury should be equally applicable to recovery for mental injury-related expenses." Note, *supra* note 7, at 217.

<sup>126</sup>IND. CODE § 16-7-3.6-13 (Supp. 1980); MINN. STAT. ANN. § 299B.06(2)(g) (West Supp. 1980); N.Y. EXEC. LAW § 630 (McKinney Supp. 1972-1980).

<sup>127</sup>IND. CODE § 16-7-3.6-13 (Supp. 1980); MINN. STAT. ANN. § 299B.09 (West Supp. 1980); N.Y. EXEC. LAW § 630(c) (McKinney Supp. 1972-1980).

<sup>128</sup>IND. CODE § 16-7-3.6-13 (Supp. 1980).

<sup>129</sup>N.Y. EXEC. LAW § 630(a)-(b) (McKinney Supp. 1972-1980).

<sup>130</sup>MINN. STAT. ANN. § 299B.06(2)(g) (West Supp. 1980).

amount, especially since financial hardship is a condition of receiving the emergency award. Another reason for considering a more liberal emergency award provision in the Indiana Act is that final awards are only paid twice a year, that is, within thirty days after the award is computed either on July 31 or January 31 of the calendar year.<sup>131</sup> This delayed payment procedure could work a severe hardship on claimants.

#### F. *Limitations on Recovery*

The Indiana Act places the most restrictive financial limitations on the amount of benefits which a victim can be awarded. Under the Indiana Act, an award to a claimant cannot exceed \$10,000 and will not cover the first \$100 of the claim.<sup>132</sup> A similar minimum financial loss requirement in the New York Act, however, was repealed in 1976.<sup>133</sup> The New York Act also does not limit the amount of the award for medical expenses,<sup>134</sup> but the Act does provide that no award for loss of earnings or support can exceed \$250 per week or an aggregate of \$20,000.<sup>135</sup> Under the Minnesota Act, reparations are reduced by the first \$100 of economic loss,<sup>136</sup> and "reparations paid to all claimants suffering economic loss as the result of an injury or death of any one victim shall not exceed \$25,000."<sup>137</sup>

1. *Minimum Loss Requirements.*—The minimum loss requirements in the Indiana and Minnesota Acts have been attacked on several grounds. It is argued that such requirements are inequitable toward low-income people for whom a loss of less than \$100 may be a great sum; the requirements encourage "padding" of claims; victims with losses approximating \$100 would still submit

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<sup>131</sup>IND. CODE § 16-7-3.6-17 (Supp. 1980).

<sup>132</sup>*Id.* § 16-7-3.6-12(a).

<sup>133</sup>Act of Aug. 1, 1966, ch. 894, § 1, 1966 N.Y. Laws 2596, 2599 (repealed 1976). Although the minimum loss provision in the New York legislation has been repealed, a controversial "serious financial hardship" provision remains in the Act. It has been roundly criticized by many commentators and, fortunately, was not adopted in either Indiana or Minnesota. The provision maintains that if the New York Board finds that a claimant will not suffer "serious financial hardship" as a result of losses and expenses, then the Board "shall deny an award." N.Y. EXEC. LAW § 631(6) (McKinney 1972). The New York Board itself has argued for repeal of this provision, noting the difficulty of determining "serious financial hardship." See Edelhertz (pt. 2), *supra* note 6, at 112; Note, *Compensation for Victims of Crimes of Violence—New York Executive Article 22*, 31 ALB. L. REV. 120, 124 (1967).

<sup>134</sup>N.Y. EXEC. LAW § 631(2) (McKinney Supp. 1972-1980).

<sup>135</sup>*Id.* § 631(3).

<sup>136</sup>MINN. STAT. ANN. § 299B.04(2) (West Supp. 1980).

<sup>137</sup>*Id.* § 299B.04(3). Minnesota originally had a maximum financial limitation of \$10,000. Act of April 11, 1974, ch. 463, § 4, 1974 Minn. Laws 1132, 1136 (amended 1977).

the claims and these claims will still be processed to a certain extent; victims with less than \$100 loss will still have knowledge concerning the commission of the crime; and such victims would have knowledge that would enhance the public perception and awareness of victim compensation programs.<sup>138</sup> There is also substantial evidence that the minimum loss requirement excludes many victims from the benefits of a victim compensation program. In a comprehensive study of victim compensation programs throughout the nation, Deborah M. Carrow found "the financial burden of medical expenses and loss of income is relatively small for most victims. Generally, medical costs are less than \$100; average loss of income due to victimization is also less than \$100."<sup>139</sup> James Garofalo and L. Paul Sutton estimate in their 1977 nationwide study of crime victimization that 75% of the victims with unreimbursed medical costs lost under \$100<sup>140</sup> and 48% of the victims of violent crimes lost less than \$100 in employment earnings.<sup>141</sup> A Minnesota report observes:

The [minimum loss] requirement, however, does not avoid imposing a hardship. A reasonable assumption can be made that victims from middle and upper income groups will either have collateral sources of recovery, or be better able to absorb losses of less than \$100. Victims from lower income groups, however, will suffer the brunt of the requirement. They form a disproportionate percentage of crime victims and are peculiarly unable to bear even small losses.<sup>142</sup>

Indiana policymakers should consider following the lead of New York in abolishing the minimum loss requirement. The resultant costs should not be prohibitive. A study by James Garofalo and M. Joan McDermott found that, "'dropping the minimum loss requirements . . . results in a 12 percent increase in total program cost . . . but it also results in a 187 percent increase in the number of victimizations covered by the program. . . . Lowering or abolishing the minimum loss requirements, then, acts to extend coverage without greatly increasing costs.'"<sup>143</sup>

2. *Maximum Financial Limitations.*—The Indiana Act also has the most restrictive limitation on the maximum amount recoverable

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<sup>138</sup>CARROW, *supra* note 22, at 50-51.

<sup>139</sup>*Id.* at 15.

<sup>140</sup>J. GAROFALO & L. SUTTON, COMPENSATING VICTIMS OF VIOLENT CRIME: POTENTIAL COSTS AND COVERAGE OF A NATIONAL PROGRAM 24 (Law Enforcement Assistance Administration Analytic Report SD-VAD-5, 1977).

<sup>141</sup>*Id.* at 30.

<sup>142</sup>Note, *supra* note 7, at 209.

<sup>143</sup>Garofalo & McDermott, *National Victim Compensation: Its Cost and Coverage*, 1 LAW & POL'Y Q. 439, 456-57, quoted in CARROW, *supra* note 22, at 163.

for a single injury or death. Fiscal considerations may require some maximum limitation on the amount of benefits provided under any victim compensation scheme operated by a governmental body in order for the program to survive financially. The goal for any state-operated victim compensation program should be to provide the most cost effective benefits while fulfilling the objectives of victim compensation. Arguments for a maximum financial limitation are that it reduces the overall program cost of victim compensation and that it is necessary for a victim compensation program to be politically acceptable.<sup>144</sup> Arguments against a maximum financial limitation are that high medical costs may quickly deplete an allowance under the maximum financial limitation and therefore prevent the program from fully compensating the victims of violent crimes for the expenses they actually incur.<sup>145</sup> As Carrow notes:

[E]ven when medical expenses are nominal, the maximum available award could be grossly inadequate to compensate lost earnings or support. This seems especially possible where the victim was killed. These unfortunate results are most often realized where the upper limit is \$5,000 or even \$10,000. As legislators have gained experience with victim compensation programs and determined that program costs have turned out not to be as burdensome as expected, they have raised the upper limit.<sup>146</sup>

The maximum financial limitation for benefits under the Indiana victim compensation program cannot be considered excessively penurious in comparison to other American jurisdictions because most have statutory limits of \$10,000 or \$15,000 for victim compensation benefits.<sup>147</sup> Indiana policymakers, however, should consider increasing the maximum financial limitation based on the reasons outlined above. Reform could be modeled on the New York scheme which allows unlimited compensation for medical expenses incurred as a result of criminal victimization.

3. *Collateral Sources and Subrogation.*—The Indiana and New York Acts have similar provisions requiring that compensation awards be reduced by the amount of benefits received or to be received from collateral sources, that is, from the offender, private insurance contracts, public funds, etc.<sup>148</sup> The collateral source provi-

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<sup>144</sup>CARROW, *supra* note 22, at 58.

<sup>145</sup>*Id.*

<sup>146</sup>*Id.*

<sup>147</sup>*Id.* at 57.

<sup>148</sup>IND. CODE § 16-7-3.6-11(a)-(b) (Supp. 1980); N.Y. EXEC. LAW § 631(4) (McKinney Supp. 1972-1980).

sion in the Minnesota Act contains an important distinction. Under the Minnesota Act, benefits from a collateral source are deducted from the *economic loss* rather than from the amounts awarded.<sup>149</sup> This distinction has its greatest impact on victims suffering losses in excess of the maximum financial limitation on benefits under the Minnesota (\$25,000)<sup>150</sup> and Indiana (\$10,000) Acts.<sup>151</sup> Victims suffering these losses are in great need of assistance. If the economic loss to a Minnesota victim was \$35,000 and a collateral source would cover \$25,000 of this loss, the victim claimant could still recover \$10,000 under the Minnesota provisions. However, if an Indiana victim suffered an out-of-pocket loss of \$20,000, and \$10,000 of this loss was to be covered by a collateral source, the victim would not be able to recover the other \$10,000. The amount awarded under the Indiana Act cannot exceed \$10,000 and this figure must be further reduced by the amount of any benefits received from a collateral source. Indiana policymakers should consider the Minnesota collateral source provision because it more fairly compensates the victim for his or her losses resulting from a violent crime.<sup>152</sup>

The Acts of all three states each contain a subrogation provision, which merely provides that the state is subrogated, to the extent of compensation awarded by the state, to the victim's rights to recover for economic or pecuniary loss from a collateral source.<sup>153</sup> The three statutes also provide that awards under the victim compensation programs are not subject to execution or attachment by a creditor unless he provided services and products which were covered by the award.<sup>154</sup> The Indiana Act also provides that unpaid bills are mandatorily payable to the claimant and the creditor jointly.<sup>155</sup>

### G. Claim Procedures

In Indiana, the Violent Crime Compensation Division employs

<sup>149</sup>MINN. STAT. ANN. § 299B.02(4), .04(1) (West Supp. 1980).

<sup>150</sup>*Id.* § 299B.04(3).

<sup>151</sup>IND. CODE § 16-7-3.6-12(a) (Supp. 1980).

<sup>152</sup>The Indiana and Minnesota Acts both include a laudable provision that excludes as a collateral source deduction, proceeds from a life insurance policy on the deceased victim. IND. CODE § 16-7-3.6-11(a) (Supp. 1980); MINN. STAT. ANN. § 299B.02(4) (West Supp. 1980).

<sup>153</sup>IND. CODE § 16-7-3.6-8(c) (Supp. 1980); MINN. STAT. ANN. § 299B.10 (West Supp. 1980); N.Y. EXEC. LAW § 634 (McKinney 1972). Under the Indiana Act, the state is entitled to a lien in the amount of the award of any recovery made by or on behalf of the victim. IND. CODE § 16-7-3.6-8(d) (Supp. 1980).

<sup>154</sup>IND. CODE § 16-7-3.6-15 (Supp. 1980); MINN. STAT. ANN. § 299B.09 (West 1980); N.Y. EXEC. LAW § 632 (McKinney Supp. 1972-1980).

<sup>155</sup>IND. CODE § 16-7-3.6-12(b) (Supp. 1980). Minnesota, by statute, and New York, by practice, allow for the award to be paid directly to creditors of the claimants. MINN. STAT. ANN. § 299B.09 (West Supp. 1980); Edelhertz (pt. 1), *supra* note 6, at 37.

hearing officers who review all applications to verify proper completion.<sup>156</sup> Incomplete applications are returned to the applicant with a request for additional information.<sup>157</sup> If the application is complete, the Division must accept it and investigate the facts stated in the application to verify that all statutory requisites have been met.<sup>158</sup> A hearing may be held concerning the merits of the application at which time any interested person may appear and offer evidence or argument on any issue relevant to the application.<sup>159</sup> Fifteen days before the hearing, the claimant must be given by certified mail written notice of the date, time, place, and scope of the hearing.<sup>160</sup> All hearings are open to the public unless the interests of the victim or society require privacy.<sup>161</sup> Within ten days after the hearing, the hearing officer must issue a written determination supported by findings of fact and conclusions of law based on the records from the hearing, investigation, and application of the claimant.<sup>162</sup> "[A] hearing officer may not deny an award without providing the claimant with an opportunity for a hearing."<sup>163</sup> Within twenty-one days after receipt of the hearing officer's determination, the state or a claimant may file a written appeal with the Division Director.<sup>164</sup> Thereafter, the appeal is reviewed by the full Industrial Board.<sup>165</sup>

The New York and Minnesota procedures are different from the Indiana procedures in that they place primary decision making responsibilities on a Board member rather than on a hearing officer. In New York, victim's claims are assigned to a Board member<sup>166</sup> who must examine and investigate the claim.<sup>167</sup> A Board member may make a decision on the claim or, if unable to reach a decision based on the documents submitted in support of the claim and the investigative report,<sup>168</sup> he shall order a hearing where any relevant, non-privileged evidence is admissible.<sup>169</sup> After the hearing, the Board member must make a decision to grant or deny the claim, and file a written report stating the reasons for the decision.<sup>170</sup> Within thirty

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<sup>156</sup>IND. CODE § 16-7-3.6-9 (Supp. 1980).

<sup>157</sup>*Id.* § 16-7-3.6-10(a).

<sup>158</sup>*Id.* § 16-7-3.6-10(b). *See also* text accompanying notes 93-107 *supra*.

<sup>159</sup>IND. CODE § 16-7-3.6-10(c).

<sup>160</sup>*Id.*

<sup>161</sup>*Id.*

<sup>162</sup>*Id.* § 16-7-3.6-10(d).

<sup>163</sup>*Id.* § 16-7-3.6-10(g).

<sup>164</sup>*Id.* § 16-7-3.6-10(e).

<sup>165</sup>*Id.*

<sup>166</sup>N.Y. EXEC. LAW § 627(1) (McKinney 1972).

<sup>167</sup>*Id.* § 627(2).

<sup>168</sup>*Id.* § 627(4).

<sup>169</sup>*Id.*

<sup>170</sup>*Id.* § 627(5)-(6).

days after the receipt of the decision, the claimant or Board member may request in writing consideration of the decision by the Board.<sup>171</sup> The chairman must designate three members of the Board, not including the Board member who made the decision, to review the record and affirm or modify the decision.<sup>172</sup> This action is considered final, and the Board must file a written report stating the reasons for its decision if it differs from the decision reached by the single Board member.<sup>173</sup>

The Minnesota procedure is substantially similar. After assignment to a Board member and investigation of the claim, the Board member must decide the claim.<sup>174</sup> After the hearing, the Board member must make a decision to grant or deny the claim and file a written report stating the reasons for the decision.<sup>175</sup> The claimant or any Board member may, within thirty days after receipt of the decision, apply in writing for consideration of the decision by the full Board.<sup>176</sup> Thereafter, the Board must treat such claims as a contested case under the Minnesota rules of administrative procedure.<sup>177</sup>

The administrative efficiency of the Indiana victim compensation program can profit from an analysis of the experiences of New York and Minnesota. First, Indiana administrators should ensure that application forms are clearly written, easy to read, and request only essential information. In Minnesota:

The filing of a claim . . . is straightforward. To avoid intimidation of potential claimants, only two simple forms are utilized, which include an authorization by the claimant to release all records and information relating to the incident by hospitals, doctors, and law enforcement agencies. In contrast to programs in other states, the burden is then on the Board to obtain from the claimant and other persons all information reasonably related to the validity of the claim.<sup>178</sup>

One of the most problematic areas of the claim procedure process is the investigation and verification of claims. The issue at this stage is observed here:

[V]ictim compensation programs can assume two related, but

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<sup>171</sup>*Id.* § 628(1)-(2) (McKinney Supp. 1972-1980).

<sup>172</sup>*Id.* § 628(3).

<sup>173</sup>*Id.*

<sup>174</sup>MINN. STAT. ANN. § 299B.07(1)-(3) (West Supp. 1980).

<sup>175</sup>*Id.* § 299B.07(4)-(5).

<sup>176</sup>*Id.* § 299B.08(1)-(2).

<sup>177</sup>*Id.* § 299B.08(3).

<sup>178</sup>Note, *supra* note 7, at 197.

different approaches in this phase of the claims process: they may simply confirm the information furnished in the claim application, placing the burden of providing information with the applicant; or they may obtain the bulk of the information needed to process the claim through their own efforts, requiring only that the applicant provide the basic information necessary to allow the acquisition of the additional information. . . .<sup>179</sup>

The New York program uses the first procedure employing a two-stage information gathering process—the original application requests minimal information, but additional forms are sent out for more detailed information.<sup>180</sup> As noted earlier, the Minnesota program employs the second procedure which only requests basic information;<sup>181</sup> additional information must be gathered by the Minnesota Board.<sup>182</sup> The advantage of the Minnesota procedure is that it is less burdensome to the victim. The advantage of the New York procedure is that it is less burdensome to the victim compensation program administration. The decision as to which procedure to use should depend upon cost factors, work load, and interest in providing the maximum assistance to the victim. Evidence from New York indicates the consequences of placing the verification burden on the claimant. In New York, it is reported that the Board disallows at least 50% of the claims because of inadequate or incomplete information concerning the claimant's application.<sup>183</sup>

#### H. Attorney Involvement

The role of attorneys in the victim compensation process has been disputed. Proponents have urged that attorney involvement promotes procedural compliance by claimants and more accurate interpretation of the applicable statutes.<sup>184</sup> Opponents contend that attorney involvement produces too many legalistic and burdensome formalities for the program, complicates rather than facilitates compensation to the victim, and disadvantages those without counsel.<sup>185</sup> Each of the statutes under consideration allows claimants to be represented by counsel.<sup>186</sup>

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<sup>179</sup>CARROW, *supra* note 22, at 127-28.

<sup>180</sup>*Id.* at 129.

<sup>181</sup>Note, *supra* note 7, at 197.

<sup>182</sup>*Id.*

<sup>183</sup>W. McDONALD, *supra* note 88, at 274.

<sup>184</sup>CARROW, *supra* note 22, at 62.

<sup>185</sup>*Id.*

<sup>186</sup>IND. CODE § 16-7-3.6-14 (Supp. 1980); MINN. STAT. ANN. § 299B.071 (West Supp. 1980); N.Y. EXEC. LAW § 623(3) (McKinney Supp. 1972-1980).

In Indiana, attorney fees are included in the award to the claimant as determined by the Division. The Indiana provision specifically states that attorney fees may not exceed 15% of an award of less than \$5,000, nor 10% of an award not less than \$5,000 nor more than \$10,000.<sup>187</sup> Neither the New York nor the Minnesota Acts are as specific as the Indiana provision concerning attorney fees. The New York program allows attorney fees to be a part of the award to the claimant.<sup>188</sup> The Minnesota Act does not allow attorney fees as a part of the award, but the Board may limit the fees charged by the attorney for representing a claimant before the Board.<sup>189</sup> The Indiana provision regarding attorney fees is reasonable because the provision cannot be considered a financial boon for attorneys, yet it affords claimants adequate legal representation if they so choose.

### I. Cost and Funding

Of the three victim compensation programs examined in this Article, only the Indiana program has a special source of funds in addition to an appropriation from the state general fund. The 1980 Indiana General Assembly provided a \$50,000 annual appropriation from the state general fund to the Indiana Industrial Board to administer the state victim compensation program.<sup>190</sup> Prior to this legislation, the Indiana victim compensation program relied solely on a special funding source entitled the "Violent Crime Victims Compensation Fund" which provided that a criminal court cost of ten dollars for all Class A misdemeanors and all felonies would be deposited in a special fund.<sup>191</sup> Pursuant to the 1980 legislation, the Indiana program is currently funded from the state general fund for administrative purposes and the special funding provision for the payment of awards.<sup>192</sup>

Special funding is not without its critics. Carrow noted that "[o]ne disadvantage of this method is that its success is highly dependent on the efforts of other agencies--usually the courts--to collect the additional funds. Some programs have experienced difficulty

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<sup>187</sup>IND. CODE § 16-7-3.6-14 (Supp. 1980). An attorney who knowingly contracts for or receives a fee larger than the amount approved by the Industrial Board commits a Class A misdemeanor and must forfeit his fee for representing a claimant. *Id.*

<sup>188</sup>N.Y. EXEC. LAW § 623(3) (McKinney Supp. 1972-1980). *See also* Edelhertz (pt. 2), *supra* note 6, at 108.

<sup>189</sup>MINN. STAT. ANN. § 299B.071 (Supp. 1980).

<sup>190</sup>Act of Feb. 28, 1980, Pub. L. No. 117, § 7, 1980 Ind. Acts 1309, 1313 (1980) (codified at IND. CODE § 16-7-3.6-20 (Supp. 1980)).

<sup>191</sup>Act of Feb. 27, 1978, Pub. L. No. 358, § 17, 1977 Ind. Acts 22, 29 (1978) (current version at IND. CODE § 16-7-3.6-17 (Supp. 1980)).

<sup>192</sup>IND. CODE § 16-7-3.6-17 (Supp. 1980).

in gaining the requisite cooperation.”<sup>193</sup> The Indiana experience to date reflects the accuracy of this observation. Concern has been expressed by Indiana administrators about the adequacy of a special funding source which is dependent upon an already overworked court system.<sup>194</sup> Furthermore, the sufficiency of the special fund to fully meet the needs of victim compensation is uncertain. When the Indiana victim compensation program relied solely on the special funding source, \$67,903.33 was collected in a six month period to be paid to the “Violent Crime Victims Compensation Fund” in January, 1979.<sup>195</sup> Only four awards at a cost of \$11,563.16 were made out of eighty-two claims filed with the victim compensation program from January 1, 1979 to June 15, 1979.<sup>196</sup> Those four awards exhausted a considerable portion of the special fund; consequently, seventy-two of the eighty-two claims were still pending for this period with approximately one-sixth of the fund already distributed.<sup>197</sup> It is strongly advised that if the Indiana program is to rely on the special fund, then the fund must be continuously monitored to confirm its adequacy to fund awards in full. If it is found to be inadequate, the special fund should give way to greater reliance on the state general fund.

The principal costs of a victim compensation program are administrative and compensative. Administrative expenses are generally for salaries, facilities, materials and supplies, and other related requirements. Administrative expenses are typically about 30% of a program’s total budget.<sup>198</sup> In fiscal year 1977-1978, administrative expenses for the New York program were 15% of the total budget.<sup>199</sup> In the same fiscal year, administrative expenses were 13% of the total budget in the Minnesota program.<sup>200</sup> In both

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<sup>193</sup>CARROW, *supra* note 22, at 170.

<sup>194</sup>Interview, *supra* note 38.

<sup>195</sup>ANNUAL REPORT, *supra* note 35, at 4. For unknown reasons, sixteen counties, including Marion, did not make deposits into the fund. *Id.*

<sup>196</sup>*Id.* at 7.

<sup>197</sup>*Id.* at 5.

<sup>198</sup>CARROW, *supra* note 22, at 26.

<sup>199</sup>*Id.* at 152. For fiscal year 1977-1978, the New York budget for its victim compensation program was,

Total Budget	\$5,052,395
Benefit Payments	4,313,078
Administrative Expenses	739,317
Staff Number	46
Claims Filed	5,489
Number of Awards	1,476

*Id.*

<sup>200</sup>*Id.* For fiscal year 1977-1978, the Minnesota budget for its victim compensation program was,

of these states, administrative efficiency, roughly measured as the ratio of total budget allocation to administrative costs, is quite high compared to the national norm. After the Indiana program expends its initial start-up cost, the program should attempt to attain the administrative efficiency of the New York and Minnesota programs.

### *J. Special Statutory Provisions*

Several special provisions in the New York and Minnesota victim compensation legislation are worthy of emulation by Indiana. Of particular importance is a provision requiring the New York and Minnesota programs to publicize the availability of compensation for victims of violent crimes.<sup>201</sup> The New York statute stipulates that every police station must have information available, including application forms, relating to the availability of compensation for victims of crime. Every victim who reports a crime must be supplied by the person receiving the report with information and application forms concerning victim compensation. Every general hospital established under state law which provides out-patient emergency medical care must prominently display in its emergency room posters notifying the public of the existence of the crime victim compensation program.<sup>202</sup> The Minnesota legislation specifies that "all law enforcement agencies investigating crimes shall provide forms to each person who may be eligible to file a claim" under the victim compensation program and inform them of their rights thereunder.<sup>203</sup> All law enforcement agencies must maintain a supply of forms nec-

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Total Budget	\$400,000
Benefit Payments	347,500
Administrative Expenses	52,500
Staff Number	2
Claims Filed	389
Number of Awards	241

*Id.*

<sup>201</sup>MINN. STAT. ANN. § 299B.15 (West Supp. 1980); N.Y. EXEC. LAW § 625-a (McKinney Supp. 1972-1980).

<sup>202</sup>N.Y. EXEC. LAW § 625-a (McKinney Supp. 1972-1980). The statute also provides that:

No cause of action. . . arising out of a failure to give or receive the notice[s] required by [law]. . . shall accrue against the state or any of its agencies or local subdivisions, or, any police officer or other agent, servant or employee thereof, or any hospital or agents or employee thereof, nor shall any such failure be deemed or construed to affect or alter any time limitation or other requirement contained in this article for the filing or payment of a claim hereunder.

*Id.* § 625-a(2).

<sup>203</sup>MINN. STAT. ANN. § 299B.15 (West Supp. 1980).

essary for the preparation and presentation of claims.<sup>204</sup> These provisions promote more expansive, less sporadic assistance to victims. It is highly recommended that Indiana policymakers mandate a duty to publicize and to inform the public regarding the availability of victim compensation.

The New York and Minnesota statutes have what has come to be known as a "Son-of-Sam" provision. These require that moneys earned by a criminal offender from materials distributed for profit concerning the offender's participation in a particular violent crime must be turned over to the state victim compensation program to distribute as benefits for the victim of the particular violent crimes committed by the offender.<sup>205</sup> The New York Act reads:

(1) Every person, firm corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise by terms of such contract, be owing to the person so accused or convicted or his representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) by such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.<sup>206</sup>

The statute continues by specifying that the New York Board must publicize by a legal notice in newspapers that such escrow funds are available;<sup>207</sup> that a person found not guilty as a result of the defense of mental disease or defect is deemed a convicted person;<sup>208</sup> and that

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<sup>204</sup>*Id.*

<sup>205</sup>*Id.* § 299B.17; N.Y. EXEC. LAW § 632-a (McKinney Supp. 1972-1980).

<sup>206</sup>N.Y. EXEC. LAW § 632-a(1) (McKinney Supp. 1972-1980).

<sup>207</sup>*Id.* § 632-a(2).

<sup>208</sup>*Id.* § 632-a(5).

the moneys in the escrow account must be turned over to the accused person upon the dismissal of charges or acquittal, or after five years have elapsed from the establishment of the escrow account if no actions are pending against the convicted person under this provision.<sup>209</sup> Its underlying wisdom is unassailable and entirely compatible with the philosophy of victim compensation. Indiana should adopt similar legislation in order to transfer an otherwise unavailable asset of the criminal to the victim.

## V. CONCLUSION

The propriety of state-operated victim compensation programs is beyond debate. Any quarrel should be reserved for questions of means of implementation. This Article has surveyed the Indiana Act in comparison with its New York and Minnesota counterparts. Our conclusion is that Indiana has been somewhat tentative in its embrace of the philosophy of victim compensation. This philosophy is more deeply rooted in New York and Minnesota. Both states offer valuable experience and enlightened legislative models from which Indiana can profit. In a time of heightened anxiety about crime and its corrosive effects, Indiana should improve upon its worthy initial efforts. It should adopt those legislative measures of New York and Minnesota to which we have alluded. They are necessary responses to genuine needs and actual circumstances of victims.

As to fiscal impact, it should be noted that not everything advocated above costs money. Changing the filing, reporting, and emergency award provisions would cost nothing. Publicizing the availability of victim compensation involves relatively insignificant expenditures. There will be some additional costs in providing genuine assistance to victims of violent crimes, but these costs must be borne if victims are to receive their due.

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<sup>209</sup>*Id.* § 632-a(3)-(4).

